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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

MARIA A. PEREZ-SANCHEZ, Individually,
and as Surviving Mother of LUIS ANTONIO
MARTINEZ-PEREZ, Deceased; and ANDREA
A. AVILA-PEREZ, as Surviving Mother of
IKER AXEL GARCIA-AVILA, Deceased,

Plaintiffs,

vs.

SUMITOMO RUBBER INDUSTRIES, LTD.,
SUMITOMO RUBBER NORTH AMERICA,
INC., SUMITOMO RUBBER (THAILAND)
CO., LTD., TIRE XPRESS, INC. and DOES
ONE through TWENTY, inclusive,

Defendants.

CASE NO.

NOTICE OF REMOVAL

DEFENDANTS SUMITOMO RUBBER INDUSTRIES, LTD. AND SUMITOMO RUBBER
NORTH AMERICA, INC.'S NOTICE OF REMOVAL

COMES NOW Defendants SUMITOMO RUBBER INDUSTRIES, LTD. (hereinafter "SRI")
and SUMITOMO RUBBER NORTH AMERICA, INC. (hereinafter "SRNA"), by and through its

counsel, the law firm of STEPHENSON & DICKINSON, P.C., hereby submits this Notice of Removal of Action to the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1446.

Removal is appropriate pursuant to 28 U.S.C. § 1446(b) because this Court has original jurisdiction over this litigation pursuant to 28 U.S.C. § 1332; the matter in controversy exceeds the \$75,000.00 requirements of § 1332 as based upon Plaintiffs' alleged damages, exclusive interests and costs; and diversity jurisdiction exists between Plaintiffs and Defendants, on the following grounds:

I. NOTICE OF REMOVAL

A) Factual Background:

1. Plaintiffs MARIA A. PEREZ-SANCHEZ, individually, and as surviving mother of LUIS ANTONIO MARTINEZ-PEREZ, deceased; and ANDREA A. AVILA-PEREZ, as surviving mother of IKER AXEL GARCIA-AVILA, deceased (hereinafter collectively, "Plaintiffs") filed a Complaint demanding a right to trial by jury and naming several defendants, including SRI; SRNA; Sumitomo Rubber (Thailand) Co., Ltd.; Tire Xpress, Inc.; and does one through twenty. Copies of all pleadings, process, or orders served upon Defendant are attached to this Notice as Exhibit "A" as required by 28 U.S.C. § 1446(a); See *Plaintiffs' September 12, 2017 Complaint* attached hereto as Exhibit B.

2. The action arises from Plaintiffs' alleged motor vehicle accident in Yavapai County, Arizona on December 13, 2015, in which Plaintiff MARIA A. PEREZ-SANCHEZ alleged that she was injured and minors, LUIS ANTONIO MARTINEZ-PEREZ and IKER AXEL GARCIA-AVILA, were killed due to a tire failure. See *Plaintiffs' First Amended Complaint* attached hereto as Exhibit C at ¶16. Plaintiffs further allege that the Sumitomo Defendants designed, distributed and manufactured the tire, and Tire Xpress sold and installed the tire. Exhibit C at ¶ 7, 8, 9 and 19.

B) Diversity Jurisdiction – Amount in Controversy

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 based upon diversity, as the amount in controversy exceeds \$75,000.00, and all the Plaintiffs are diverse from all real Defendants in this matter.

1 4. Plaintiffs allege that they seek damages in an amount greater than \$75,000.00 (the sum of
 2 Plaintiffs' general and special damages each in an amount in excess of fifty-thousand dollars and all
 3 pure economic loss in an amount in excess of fifty-thousand dollars is \$100,000.00). Exhibit C at ¶
 4 23, 62, 63, 67, 71 and Plaintiffs' prayer for relief. Moreover, two persons were killed in the accident
 5 and the damages of the heirs and estates also exceed \$75,000.00.

6 5. Furthermore, Plaintiffs also disclosed that their initial computation of damages in what
 7 appears to be Plaintiff Maria A. Perez-Sanchez's medical expenses to date, February 27, 2108, were
 8 in the amount of \$312,039.81. See *Plaintiffs' NRCP 16.1 Initial Disclosures* attached hereto as
 9 Exhibit D at pg.6. Thus, the amount in controversy requirement for diversity jurisdiction has been
 10 met on the face of the Plaintiffs' pleadings.

11 **C) Diversity Jurisdiction – Plaintiffs are Diverse from all Sumitomo Defendants**

12 5. In the First Amended Complaint, Plaintiffs acknowledge that they are residents of
 13 the State of Nevada. Exhibit C at ¶ 3-6. Thus, the requirements of diversity jurisdiction are met if
 14 none of the remaining Defendants, who have not been improperly joined, are not incorporated in
 15 Nevada and do not maintain principal places of business in Nevada. See 28 U.S.C. § 1332.

16 6. In the Clark County District Court litigation (A-17-761291-C), the Parties agreed with
 17 the Court's approval *via Stipulation and Order Granting Leave to Change the Case Caption* to
 18 dismiss certain named defendants, whereby the remaining parties to this litigation were:

19 A) Plaintiffs;

20 B) SRI;

21 C) SRNA;

22 D) Sumitomo Rubber (Thailand) Co., Ltd.; and

23 E) Tire Xpress, Inc.

24 See the January 8, 2018, Court approved *Stipulation and Order Granting Leave to Change the Case*
 25 *Caption* attached hereto as Exhibit E; Exhibit C.

26 7. As set forth in the *Plaintiffs' First Amended Complaint*, the Sumitomo defendants
 27 including SRI and SRNA are not located in Nevada, nor organized under Nevada law. Exhibit C at ¶
 28 7, 8 and 9.

8. Accordingly, all of the Plaintiffs are diverse from all of the remaining Sumitomo Defendants, which include SRI, SRNA and SRT.

D) Diversity Jurisdiction – Plaintiffs Fail to State a Claim Against Tire Xpress, Inc.

9. Defendant Tire Xpress, Inc. is a Nevada Corporation. Exhibit C at ¶ 10.

10. Plaintiffs allege that their Falken Sincera SN828 size 195/70R14 91T, DOT R8J93KFR1112 tire had failed causing their alleged claims, which was allegedly purchased from and installed by Tire Xpress, Inc. Exhibit C at ¶ 19. As such, the Plaintiffs allege certain causes of action against Tire Xpress, Inc. for strict liability, negligence, wrongful death, personal injury, and negligent infliction of emotional distress. Exhibit C.

11. The parties began discovery in this case, and on June 20, 2018, Tire Xpress, Inc., filed its *Answers to Plaintiff Maria A. Perez-Sanchez' First Set of Interrogatories*, under oath, which provided in pertinent part:

INTERROGATORY NO. 1:

Please describe the role placed by You in selling and installing the Failed Tire.

RESPONSE TO INTERROGATORY NO.1:

Defendant objects to this Interrogatory as it assumes facts that have not been established and are disputed. Subject to and without waiving said objections, Defendant responds as follows: Defendant did not sell or install the Falken Sincere SN828 Tire that Plaintiff alleges to have failed.

See *Defendant Tire Xpress, Inc.'s Answers to Plaintiff Maria A. Perez-Sanchez' First Set of Interrogatories* attached hereto as Exhibit F at No.1.

12. Likewise, all of the other pertinent answers provided for by Tire Xpress, Inc., under oath, also denied selling the tire to Plaintiffs or the installation of the tire on Plaintiffs' vehicle. Exhibit F at Nos. 2–3, 5-8, and 16.

13. The doctrine of improper joinder prevents the Plaintiffs from defeating diversity jurisdiction by naming this non-diverse party. See *Richey v. Upjohn Drug Co.*, 139 (F.3d 1313, 1318 (9th Cir. 1998); *Wilson v. Republic Iron & Steel Co.*, 257 U.S. at 97, 42 S.Ct. at 37 (“a removing

1 defendant could submit facts showing that a resident defendant had ‘no real connection with the
2 controversy.’”).¹

3 14. A removing defendant may establish improper joinder by showing either: 1) actual fraud
4 in the jurisdictional facts presented to the court; 2) the plaintiffs have no valid cause of action against
5 the non-diverse defendant; or, 3) the claims against the non-diverse or local defendant have no real
6 connection to the claims against the other defendants. The test for this second prong is “whether the
7 defendant has demonstrated that there is no possibility of recovery by the plaintiffs against the in-
8 state defendant, which stated differently means that there is no reasonable basis for the district court
9 to predict that the plaintiff might be able to recover against the in-state defendant”. *Smallwood v. Ill.*
10 *Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004).

11 15. In this case, Plaintiffs allege Tire Xpress, Inc. was liable to them for selling and installing
12 the tire in question, but such allegations are not true. See Exhibit C and compare to Exhibit E, at
13 Nos. 1, 2–3, 5–8, and 16.

14 16. As such, Plaintiffs do not have sufficient allegations to state a claim against
15 Tire Xpress, Inc., and the Court may conclude that Plaintiffs do not state viable causes of action
16 against Tire Xpress, Inc., who is a fraudulent defendant and has no real connection with the
17 controversy (it did not install, nor sell the tire in question). See *Richey v. Upjohn Drug Co.*, 139
18 *(F.3d 1313, 1318 (9th Cir. 1998); Wilson v. Republic Iron & Steel Co.*, 257 U.S. at 97, 42 S.Ct. at 37
19 *(“a removing defendant could submit facts showing that a resident defendant had ‘no real*
20 *connection with the controversy.’”); Kruso v. International Tel. & Tel. Corp.*, 872 F.2d 1416, 1426–
21 27 *(9th Cir.1989) (joinder fraudulent where no cause of action could be stated); Gasnik v. State*
22 *Farm Ins. Co.*, 825 F.Supp. 245, 247 *(E.D.Cal.1992) (joinder fraudulent where no cause of action*
23 *could be stated). Therefore, the Court should conclude that all of the Plaintiffs are diverse from all*
24 *of the real Defendants. See 28 U.S.C. § 1332.*

25 ///

26 ///

27 ¹ Defendants who sought removal to the federal court are entitled to present the facts showing the joinder of resident Tire
28 Xpress, Inc. to be fraudulent. See *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

1 **E) Removal is Timely**

2 17. Tire Xpress, Inc. filed its *Answers to the to the Plaintiff Maria A. Perez-Sanchez'*
 3 *First Set of Interrogatories* on June 20, 2018. See Exhibit E. Accordingly, removal is timely as it is
 4 being filed within thirty (30) days of the date that SRI and SRNA received *Tire Xpress, Inc.'s*
 5 *Answers*. See 28 U.S.C. § 1446(b).

6 18. All fees required by law in connection with this Notice have been filed by Defendant at
 7 the time of filing or any deficiency will be cured immediately as allowed by the Court.

8 19. Tire Xpress, Inc. consents to this removal.

9 **F) Consent to Removal is not Needed by the Remaining Real Defendants**

10 19. Defendant Sumitomo Rubber (Thailand) Co., Inc. has not been served in this lawsuit and
 11 Defendants does one through twenty and Tire Xpress, Inc. are not real defendants as set forth above.
 12 Accordingly, their consent to removal is not required.

13 **II. CONCLUSION/PRAYER FOR RELIEF**

14 WHEREFORE, Defendants Sumitomo Rubber Industries, Ltd. and Sumitomo Rubber North
 15 America, Inc. remove the above-captioned action to the United States District Court for the District
 16 of Nevada.

17 DATED this 12 day of July, 2018.

18 STEPHENSON & DICKINSON, P.C.

19 By: 

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28 *Attorneys for Sumitomo Rubber Industries, Ltd. and*
Sumitomo Rubber North America, Inc.

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I hereby certify that I am an employee of STEPHENSON & DICKINSON and that on this 12th day of July, 2018, I caused to be served a copy of the foregoing: DEFENDANTS SUMITOMO RUBBER INDUSTRIES, LTD. AND SUMITOMO RUBBER NORTH AMERICA, INC.'S NOTICE OF REMOVAL on the party(s) set forth below by:

_____ Electronic service

_____ Placing an original or true copy in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business practices

☒ Case Management/Electronic Case Filing

_____ Hand Delivery – Receipt of Copy

addressed as follows:

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Attorneys for Plaintiff


Employee of STEPHENSON & DICKINSON

INDEX OF EXHIBITS

Exhibit A: State Court Index and Record

Exhibit B: *Plaintiffs' Complaint*

Exhibit C: *Plaintiffs' First Amended Complaint*

Exhibit D: *Plaintiffs' NRCP 16.1 Initial Disclosures*

Exhibit E: *The January 8, 2018, Court approved Stipulation and Order Granting Leave to Change the Case Caption.*

Exhibit F: *Defendant Tire Xpress, Inc., filed its Answers to the to the Plaintiff Maria A. Perez-Sanchez' First Set of Interrogatories*